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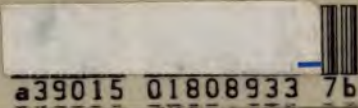
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Brooks, The UnauthORIZED And Unlawful Subjugation
OF Philippines In The Island Of Luzon by President
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THE
Unauthorized and Unlawful Subjugation of
Filipinos in the Island of Luzon
by President McKinley

BY
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THE
***Unauthorized and Unlawful Subjugation of Filipinos in
the Island of Luzon, by President McKinley.***

BY FRANCIS A. BROOKS, BOSTON.

I.

The United States Constitution was framed by the people of the several states represented in convention for the purposes of common defence and to "secure the blessings of liberty to themselves and their posterity."

The domain of the United States under the Constitution (1787) was that then embraced within the boundaries of the several states, and also that which had been ceded to the United States by the several states while under the Confederation, consisting mainly of the Northwest Territory, so-called. This territory was mostly uninhabited except by Indians, and was supposed to possess much prospective value as property and was considered only in the light of property at that time. This was the territory referred to in Section 3 of Article 4 of the Constitution, which provides "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States."

The word territory does not, we believe, occur in any other part of the Constitution, and it cannot be supposed that, as there used, it was intended to refer to any territory not originally embraced within the limits of the several

states which comprised the Union then formed.

The United States Supreme Court, in *Scott vs. Sandford* (19 How. 393), gave that construction to this clause (Art. 4, sect. 3 of the Constitution), and, if it was correct, it necessarily follows that the framers of the Constitution did not intend by that clause to confer on Congress the power of regulating by legislation the political status of the inhabitants of foreign territory afterward acquired by the United States by conquest, because, if for no other reason, the United States government was based not upon force, but upon the consent of the governed.

In *United States vs. Gratiot*, 14 Peters 527, the Supreme Court, referring to the word territory (in sect. 3 of Article 4 of the Constitution), said:

"The term territory, as here used, is merely descriptive of one kind of property, and is equivalent to the word 'lands' and Congress has the same power over it as over any other property belonging to the United States."

The power given Congress to declare and make war, of course carries with it the power to make conquests by war methods, and as a consequence, the power to govern conquered territory by war methods when so acquired; that is,

by military law, so-called, to be imposed by the conqueror at discretion upon the vanquished, so long, and only so long, as the war continues.

The military rule of the victor ceases upon the termination of hostilities, and hostilities between the United States and Spain were finally suspended on the 12th day of August, 1898, and before the conquest of the island of Luzon or of any part of it had taken place.

President McKinley, however, the commander-in-chief of the army and navy, was of a different opinion. In his message to Congress of December 5, 1898, the President said:

"The last scene of the war was enacted at Manila, its starting place, on August 13th, after a brief assault upon the works by the land forces * * * the capital surrendered unconditionally. By this the conquest of the Philippine Islands, virtually accomplished when the Spanish capacity for resistance was destroyed by Admiral Dewey's victory of the first of May, was formally sealed. I do not discuss at this time the government or the future of the new possessions which will come to us as the result of the war with Spain."

This was before the treaty of peace had been concluded and signed at Paris.

In a speech at Savannah, December 17, 1898, the President said:

"It is not a question of keeping the islands of the East, but of leaving them. Dewey and Merritt took them, and the country instantly and universally applauded."

In President McKinley's order to Gen. Otis of December 21, 1898, he said:

"The destruction of the Spanish fleet in the harbor of Manila by the United States naval squadron * * * followed by the reduction of the city, and

the surrender of the Spanish forces practically effected the conquest of the Philippine Islands and the suspension of Spanish sovereignty therein."

In this same order the President also said:

"As the result of the victories of the American arms the future control, disposition and government of the Philippine Islands are ceded to the United States, and that in fulfillment of the rights of sovereignty thus acquired * * * the actual occupation and administration of the entire group of the Philippine Islands becomes * * * necessary and the military government heretofore maintained in the city, harbor and bay of Manila is to be extended to the whole of the ceded territory."

II.

If at the time of the issue of President McKinley's order to General Otis no conquest of the Philippine Islands had been made by the United States, then this order to take and hold military possession of those islands, as against the Filipinos inhabiting them, was not only erroneous, but amounted to a declaration of war against those inhabitants.

They were then in actual possession of all parts of the island of Luzon, excepting only the city of Manila, and it was their native land. Spanish sovereignty in that island had been suspended, as stated by the President, from and after the surrender of Manila, August 13, 1898, and the United States was no longer engaged in war with Spain, and was at that time on friendly relations with the native inhabitants of the island of Luzon.

They were no longer under Spanish rule. On the contrary, the President

himself had declared them emancipated from Spain, and had ascribed that result to the assistance afforded them by the United States in their rebellion against Spanish authority.

If it were true, as asserted by the President, that he had in the war with Spain made a conquest of the island of Luzon, and the other Philippine islands while they and their inhabitants continued under the dominion of Spain, he might, perhaps, according to the international rules of war, exercise a military and despotic government over the inhabitants of the conquered territory as long as the war with Spain continued.

We have already shown that at the date of the Peace Protocol no conquest had been effected of any portion of the island of Luzon, and by that same international law, no rights whatever in Luzon could be acquired by conquest after hostilities had been suspended, and before notice of such suspension had been received at Manila.

III.

The surrender of Manila, August 13, 1898, placed only that city in military possession of the United States forces and left all of the island of Luzon outside that city in the military possession and control of Aguinaldo and his armed forces and civil government, as it had been prior to the surrender of Manila.

In the report of the members of the Taft Commission cabled from Manila to Washington, August 21, 1900, there is a statement as to the oppression and corruption existing in the provinces of the island of Luzon *during the eight months* while they were under the control of what they style the "*Malolos insurgent government.*"

Here is an admission, that for a period of at least eight months after the capture and surrender of Manila, the native Filipinos were in actual possession and control of the entire island of Luzon outside the city of Manila, and yet despite this fact, the President does not seem to have shown these Filipinos or the government there existing at the time any consideration or recognition whatever, when, in December, 1898, he ordered them to submit to his arbitrary rule as Commander-in-Chief of the United States army.

The order of December 21, 1898, to General Otis must have been issued by the President in his capacity as Commander-in-Chief of the army, since he could not then have issued such an order in any other capacity.

IV.

It appears, therefore, that the President erred in stating, as he did, that the Philippine islands or any of them, or any part of them, had been conquered by the United States forces prior to the suspension of hostilities by the peace protocol of August 12, 1898. This error was exposed by Judge Day, the chairman of the Peace Commission at Paris, in a letter afterward written by him, in which he said:

"It was not claimed that the United States had a right to the Philippine islands, as a matter of conquest."

If there had been no conquest the President then had no ground for imposing military rule upon the Filipinos under the above mentioned order to General Otis of December 21, 1898, since the treaty of peace certainly had not then been ratified by the Senate, and therefore no authority had then been conferred on the President by it.

The President, in his letter accepting nomination for the Presidency, tells us that on May 19th, 1898, he placed General Merritt in command of the military expedition destined for Manila and at the same time, among other things, directed him immediately, on arriving there, to publish a proclamation declaring that "we come, not to make war upon the people of the Philippines, nor upon any party or faction among them, but to protect them in their homes, in their employments and in their personal and religious rights."

On June 27th, 1898, Dewey reported to Secretary Long, as follows:

"I have given him (Aguinaldo) to understand that I consider insurgents as friends, being opposed to a common enemy. * * * Aguinaldo has acted independently of the squadron, but has kept me advised of his progress, which has been wonderful. * * * Have advised him (Aguinaldo) frequently to conduct the war humanely, which he has done invariably."

This was before any land forces had reached Manila from the United States, but General Anderson arrived there June 30 in command of land forces, and on July 4th he addressed a letter to Aguinaldo, as follows:

"General, I have the honor to inform you that the United States of America, whose land forces I have the honor to command in this vicinity * * * has entire sympathy and most friendly sentiments for the native people of the Philippine islands. For these reasons I desire to have the most amicable relations with you and to have you and your people co-operate with us in military operations against the Spanish forces."

On August 17th General Merritt did

make proclamation to the Filipinos agreeably to the President's directions of May 19th above stated, and under these circumstances it is clear that the Filipinos then had no reason to suppose that the United States was actuated by any but the most friendly feelings toward them, or would consent to deprive them of the benefits of the overthrow of Spanish rule in the island of Luzon, which had been accomplished by them with the assistance of the United States several months before the treaty of peace was signed at Paris.

The United States continued to hold military possession of the city of Manila after its surrender of August 13th, and at the same time Aguinaldo as the head of the Filipino army, and of a *de facto* civil government, held possession and control, both military and civil, of the remainder of the island of Luzon.

On September 19, 1898, Aguinaldo sent a cablegram to the Associated Press as follows:

"Manila, September 19, 1898.—The Filipino government desires to inform the American government and the people of that country that the many rumors circulated regarding the strained relations between the Filipinos and the American forces are base and malicious slanders of the enemies of both parties, for they are without any truth and are circulated for the purpose of prejudicing the world against the appeal of the Filipinos for their release from the oppression and cruelty of Spain. The relations of our people and yours have been and will continue to be of the most friendly nature, and we have withdrawn our forces from the suburbs of Manila as an additional evidence of our confidence in the great American Republic.

"AGUINALDO."

V.

Having thus, as we believe, shown the President's claim of sovereignty over the Philippine islands, so far as based upon conquest, to be groundless, let us next inquire whether, in the absence of a conquest in war, that claim could be supported by anything contained in the treaty of peace.

On October 28, 1898 (before the treaty of peace was signed), in giving additional instructions to the Peace Commissioners at Paris, the President said:

"It is undisputed that Spain's authority is *permanently destroyed* in every part of the Philippines. To leave any part in her feeble control now would increase our difficulties and be opposed to the interests of humanity, nor can we permit Spain to transfer any of the islands to another Power. * * * We must either hold them or turn them back to Spain, consequently * * * the President can see but one plain path of duty, the *acceptance* of the archipelago." * * * The President in reaching the conclusion above announced * * * has been influenced by the single consideration of duty and "humanity."

We quote the above statement simply to show the President's admission that Spain had prior to October 28, 1898, ceased to have any authority whatever in the Philippine islands, and consequently that she then had no sovereignty in them capable of being transferred or sold to the United States.

Yet on October 31, 1898, President McKinley, through the Peace Commission at Paris, demanded of Spain a cession of all the Philippine islands to the United States, thus calling upon Spain to exercise authority which three days

before he said had been "permanently destroyed."

The Spanish Commissioners at first refused to yield to that demand of cession, insisting that it was contrary to the terms of the protocol. Then it was that the President offered the sum of \$20,000,000 to Spain if she would comply with the demand, and threatened to renew hostilities against her if she still persisted in refusal. This money and threat had the desired effect, and President McKinley was thus enabled, as he supposed, to carry out his kindly intentions of benefitting the Filipinos by subjecting them against their will to the despotic military rule of the United States government as administered by himself.

VI.

From and after the capture and surrender of Manila in August, 1898, President McKinley and his cabinet advisers adopted and, for many months at least, acted upon the theory, that the Philippine islands had been taken from Spain by conquest in war, and that the inhabitants of said islands had thereby become subjected to the sovereignty of the government of the United States according to the so-called rules of warfare established by international law; and the case of American Insurance Co. vs. Canter (1 Peters 571) was cited and relied on by the expansionists in support of that theory, and the American Commissioners in framing the treaty of peace introduced into it (Article 9) a provision "that the civil rights and political status of the native inhabitants of the territories * * * ceded to the United States (meaning the Philippine islands) should be determined by the Congress." intending thereby to effect a

transfer from Spain to the United States of the allegiance of the Filipinos in the Philippine islands, including the island of Luzon. No such transfer was then possible, so far at least as the island of Luzon was concerned, for the reason above shown, that the inhabitants of that island had then been emancipated from Spain and had ceased to owe allegiance to her, as President McKinley had himself declared.

VII.

When President McKinley found that the Filipinos, who had taken up arms against Spain to obtain their freedom, and had in fact, as he said, gained it, were not willing to recognize the United States as their sovereign ruler or as successor to the sovereignty of Spain, he styled them insurgents, and undertook to enforce this claim of sovereignty by using for that purpose the armed forces of the United States under his command at Manila, and he claimed a right to do this under what he calls "*his Constitutional authority.*"

In his recent letter, accepting the nomination, the President states that his purpose is to prepare the Filipinos for self-government and "to give them self-government when they are ready for it, and as rapidly as they are ready for it. *That I am aiming to do under my constitutional authority* and will continue to do until Congress shall determine the political status of the inhabitants of the archipelago."

VIII.

We now come to the inquiry upon what ground it is that the President claims to have a constitutional right to sacrifice the lives of thousands of Filipinos for refusing to submit quietly to

the domination imposed on them in his edict of December 21st, 1898, transmitted through General Otis.

At that time, December 21, 1898, the United States had acquired no title to the Philippine islands, or either of them by treaty, not then ratified. Hence the order of December 21, 1898, so far as based on treaty cession, was at least premature, and yet it is to enforce this order by arms that the President has been employing the United States army in Luzon ever since the evening of February 4, 1899, and by so doing has been sacrificing the lives of upwards of twenty thousand Filipinos fighting for liberty, as they understand it.

Bear in mind, the President now tells us he is doing this, or authorizing it to be done, not as the head of the army, but under some authority conferred upon him, as he asserts, by the United States Constitution, that is to say, in his civil, and not in his military capacity.

The war with Spain was long since ended, and the President has not been in the exercise of any war powers since December 10, 1898, nor as we understand, since August 12, 1898.

There was no treaty in force prior to February 6, 1899, before which day the United States troops were shooting Filipino soldiers in arms, that is, making war upon them, and doing this, as the President now says, under authority conferred on him by the Constitution.

What the President means, when he tells us that his proceedings in the Philippines are being conducted under what he styles "his constitutional authority" is not apparent.

But as he often refers to and describes the Filipinos in arms in the island of Luzon as "*insurgents,*" we infer his meaning is, that what he has done

and is doing there comes within the clause of the constitution which provides that he "*shall take care that the laws be faithfully executed.*" (Art. 2, Section 3.)

If this was his meaning, we think the President is greatly in error in supposing that the laws of the United States had been extended to the island of Luzon before the ratification of the treaty, or have been so extended by the treaty itself since ratification. If the laws of the United States were not extended there could not possibly have been any insurrection there against those laws.

In *Fleming vs. Page*, 9 How. 604, the Supreme Court said:

"As Commander-in-Chief of the army and navy he (the President) is authorized to direct the movements of the naval and military forces placed by law at his command and to employ them in the manner he may deem most effectual to harrass and conquer and subdue the enemy. He may invade the hostile country and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of this union, nor extend the operation of our institutions and laws beyond the limits before assigned to them by the legislative power. * * * By the laws and usages of nations, conquest is a valid title while *the victor maintains the exclusive possession of the conquered country.* * * *

"As regarded all other nations (Tampico when captured) was a port of the United States and belonged to them as exclusively as the territory included in our established boundaries. But yet it was not a part of this Union. For every nation which acquires territory by treaty or conquest holds according to its own institutions and law. * * *

"The boundaries of the United States

as they existed when war was declared against Mexico were not extended by the conquest. * * * They remained unchanged, and every place which was out of the limits of the United States as previously established by the political authority of the government was still foreign, nor did our laws extend over it. Tampico was therefore a foreign port when this shipment was made."

* * * * *

"In the view we have taken of this question, it is unnecessary to notice particularly the passages from eminent writers on the law of nations which were brought forward in the argument. They speak altogether of the rights which a sovereign acquires, and the powers he may exercise in a conquered country, and they do not bear upon the question we are considering. For in this country the sovereignty of the United States resides in the people of the several States, and they act through their representatives, according to the delegation and distribution of powers contained in the Constitution. And the constituted authorities to whom the power of making war and concluding peace is confided, and of determining whether a conquered country shall be permanently retained or not, neither claimed nor exercised any rights or powers in relation to the territory in question, but the rights of war. * * * And certainly its subjugation did not compel the United States, while they held it, to regard it as a part of their dominions, nor to give to it any form of civil government, nor to extend to it our laws."

In that case the port of Tampico was being held by the United States by virtue of its conquest in war with Mexico, and the question arose whether, while it was so held by the United States

under its military control, it was to be treated as part of the United States, or as within its revenue laws, or that goods imported into the United States therefrom must pay duties as foreign goods.

The court held it to be foreign territory and also held at the same time that the rules of international law as to the acquisition of sovereignty over foreign territory by conquest in war do not apply in favor of the United States, since sovereignty in this country resides in the people and not in the rulers.

From this decision it would seem to follow that the Supreme Court, as then constituted (1850), was of opinion that the government of the United States, being one of and by the people was not in a position to be capable of trafficking in sovereignty either by way of sale or of purchase, as might be done by monarchical or imperial governments.

In *Scott vs. Sanford*, 19 How. 397, the court remarked as follows:

"A power in the general government to obtain and hold colonies and dependent territories over which they (the Congress) might legislate without restriction *would be inconsistent with its own existence in its present form.*"

In the case of *Pollard vs. Hagan*, 3 How. 212, 223, the court said:

"Every nation acquiring territory by treaty or otherwise must hold it subject to the Constitution and laws of its own government."

In Cooley's *Principles of Constitutional Law*, p. 170, that writer says:

"When territory is acquired, the right to suffer States to be formed therefrom and to receive them into the Union must follow of course, * * * because it would be inconsistent with institutions, founded on the fundamental idea of self-government, that the federal government

should retain territory under its own imperial rule and deny the people the customary local institutions."

IX.

It follows as a matter of course, if United States laws were not in force in the Philippine islands in December, 1898, or at any time since then, that there could be no rebellion or insurrection there, as against those laws asserted by the President, and consequently, that he could have no authority, constitutional or otherwise, to put down such supposed rebellion or insubordination in any way.

There is, however, a United States statute which in express terms forbids the President from doing the very thing which, as we understand, he has been engaged in doing in the island of Luzon ever since the 4th day of February, 1899.

By chapter 263, section 15 of the Acts of Congress passed June 18, 1878, it is provided as follows:

"From and after the passage of this act it shall not be lawful to employ any part of the army of the United States as a *posse comitatus* or otherwise, for the purpose of executing the laws, except in such cases, and under such circumstances, as such employment of said force may be expressly authorized by the Constitution or by Act of Congress."

How can the President meet the charge that he has himself been violating this statute and hereby causing the death of over 20,000 Filipinos within the past year and a half in violation of law?

X.

If the positions above taken by us are correct, it is not true that the United States government is now or ever has been in lawful possession either of the